

VERDICTUM.IN

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 633 OF 2023
(Arising out of SLP (Crl.) No. 1212 of 2023)

DEEPAK KUMAR GANESH RAI MANTOAppellant(s)

Vs.

STATE OF GOA & ANR.Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the parties.

The appellant is aggrieved by the judgment and order passed by the High Court of Bombay at Goa which affirmed his conviction and sentence. He was arrayed as an accused, charged and convicted for committing offences under Sections 302, 363, 376, 201 IPC read with Section 8(2) and 60-A of the Goa Children's Act, 2003.

After hearing learned counsel on the first date of hearing this Court was of the opinion that interference with the merits of the appeal was not called for. However, limited notice was issued to the State on the question of correctness of the default sentence imposed. Besides the substantive sentence of rigorous imprisonment for life, the appellant was also imposed with fine of ₹ 2,00,000/- (for the offence committed under Section 376

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IPC read with Section 8(2) of the Goa Childrens Act, 2003) sentence of three years, fine of ₹ 5,000/- and in default simple imprisonment (for three months for the offence punishable under Section 363 IPC), fine of ₹ 10,000/- in default simple imprisonment for six months (for the offence punishable under Section 302 IPC) and fine of ₹ 3,000/- in default to undergo simple imprisonment for two months (for the offence punishable under Section 201 IPC). Thus the total quantum of fine imposed is ₹ 2,18,000/-.

Learned counsel for the appellant relied upon the judgment in "*Shahejad Khan Meheubkhan Pathan vs. State of Gujarat*" [2013 (1) SCC 570] to urge that the Court should not impose excessive default sentences, for non payment of very high amounts as fine.

Learned counsel for the State relied upon observations in the case of "*Shahejad Khan*" to the effect that the Court should be alive to the nature of the offence, circumstances in which it was committed, position of the offender and other relevant consideration such as pecuniary circumstances of the accused, while indicating the fine and the default sentence. Learned counsel for the State also relied upon the judgment in "*Sharad Hiru Kolambe vs. State of Maharashtra & Ors.*" [(2018) 18 SCC 718] to say that the default sentence per se would be over and above the substantive sentence imposed in any given case.

From the above discussion it is evident that the Courts have to be sensitive as to the nature of offence, circumstances in which the accused committed the crime and the victim even while balancing it with the peculiar financial condition which the

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accused might be placed in. In the present case, the overall amount indicated by the Trial Court (as affirmed by the High Court) is ₹ 2,18,000/-.

The appellant's principal grievance is with respect to the default sentence of three years in the event of default of payment of ₹ 2,00,000/- fine, towards the conviction under Section 376 IPC. The record indicates that the appellant was a daily wager with no permanent employment. Undoubtedly, he stands convicted of offences which cannot but be termed heinous. At the same time the Court also is to be conscious of the financial condition he is placed in. Taking in cue a judgment in *Shahejad Khan (supra)*, the Court hereby modifies the fine amount (imposed in respect of the conviction under Section 376 IPC) from ₹ 2,00,000/- to ₹ 50,000/-. Likewise, the default sentence is reduced from three years to one year's simple imprisonment. Apart from the above modification, the conviction and sentence concurrently in respect of other offences upheld are not disturbed.

The appeal is partly allowed on the above terms. All rights and contentions are kept open.

All pending applications are disposed of.

.....J.
(S. RAVINDRA BHAT)

.....J.
(DIPANKAR DATTA)

New Delhi;
February 28, 2023.

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ITEM NO.23

COURT NO.13

SECTION II-A

S U P R E M E C O U R T O F I N D I A R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 1212/2023

(Arising out of impugned final judgment and order dated 07-10-2020 in CRLA No. 27/2020 passed by the High Court of Judicature at Bombay at Goa)

DEEPAK KUMAR GANESH RAI MANTO

Petitioner(s)

VERSUS

STATE OF GOA & ANR.

Respondent(s)

(IA No.192135/2022-CONDONATION OF DELAY IN FILING and IA No.192138/2022-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

Date : 28-02-2023 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE DIPANKAR DATTA

For Petitioner(s) Dr. Sushil Balwada, AOR
Mr. Kaushal Yadav, Adv.
Mr. Nandlal Kumar Mishra, Adv.
Dr. Ajay Kumar, Adv.
Mr. Pramod Kumar, Adv.
Ms. Yashoda Katiyar, Adv.

For Respondent(s) Mr. Abhay Anil Anturkar, Adv.
Mr. Dhruv Tank, Adv.
Ms. Surbhi Kapoor, AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The operative portion of the order reads as follows :

"The appellant's principal grievance is with respect to the default sentence of three years in the event of default of payment of ₹ 2,00,000/- fine, towards the conviction under Section 376 IPC. The record indicates that the appellant was a daily wager with no permanent employment.

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Undoubtedly, he stands convicted of offences which cannot but be termed heinous. At the same time the Court also is to be conscious of the financial condition he is placed in. Taking in cue a judgment in *Shahejad Khan (supra)*, the Court hereby modifies the fine amount (imposed in respect of the conviction under Section 376 IPC) from ₹ 2,00,000/- to ₹ 50,000/-. Likewise, the default sentence is reduced from three years to one year's simple imprisonment. Apart from the above modification, the conviction and sentence concurrently in respect of other offences upheld are not disturbed.

The appeal is partly allowed in terms of the signed order.

All pending applications are disposed of.

(NEETA SAPRA)

COURT MASTER (SH)

(Signed order is placed on the file)

(MATHEW ABRAHAM)

COURT MASTER (NSH)